

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 4293 OF 2017

M/s Motilal Manakchand,
Partnership Firm,
Having its Registered Office at
2270/72, Adat Bazar, Ahmednagar,
Through its Partners
Shri. Kishor Hastimal Munot
Age : 60 years, Occu. Business
R/o Station Road, Ahmednagar

.. Petitioner

Versus

1. M/s. Jemini Cotton Mills,
Partnership Firm
Having its Office at
D-No. 4, 5, 27/11, A/4/2
Vidyanagar, Guntur-522007 (A.P.)

2. Shri. Kacherla Sankara Rao
Owner and Partner of M/s Jemini Cotton Mills,
Partnership Firm
Having its Office at
D-No. 4, 5, 27/11, A/4/2
Vidyanagar, Guntur-522007 (A.P.)

.. Respondents

...
Mr. A.P. Bhandari, Advocate for petitioner
Mr. A.D. Ostwal, Advocate for respondent no.1
Mr. K.D. Jadhav, Advocate for respondent no.2
...

CORAM : SUNIL P. DESHMUKH, J.
DATE : 10-10-2018

ORAL ORDER :

1. While following preliminary issues had been framed,

" 1. Whether the suit is hopelessly time barred ?

2. Whether the suit in the present form is maintainable ? "

Under Exhibit - 18, petitioner - plaintiff requested to let him adduce evidence on aforesaid issues and the request has been declined, observing thus :

" On gone through with detailed order Exh. 14, it is crystalised that, the said preliminary issues are proved being purely question of law and no evidence is require to be adduced. Hence application is not tenable. Therefore, rejected COA."

2. Preliminary issue in respect of limitation has been framed. There is apparent error that, issue of limitation has been considered to be purely question of law. Question of limitation has all along been considered to be mixed question of law and fact.

3. In view of the same, impugned order dated 03-12-2016 passed by learned 4th civil judge senior division, Ahmednagar in regular civil suit no. 247 of 2014, is rendered untenable. The same is set aside. Application Exhibit - 18 is allowed.

4. Writ petition is disposed of accordingly.

5. Needless to refer to that it is open to both sides to give evidence.

[SUNIL P. DESHMUKH]
JUDGE

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